

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 3635
Examiner : Chapman, Jeanette E.
Appellant : John L. Andersen
Appln. No. : 10/768,222
Filing Date : January 30, 2004
Confirmation No. : 6217
For : IN-WALL VENTILATION HOUSING

Dear Sir:

(AMENDED)
APPEAL BRIEF (37 C.F.R. § 41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on April 18, 2007.

The fees required under 35 U.S.C. § 41.20(b)(2) have already been submitted. A petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL FORM.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
 - A. References
 - 1. U.S. Patent No. 6,938,640 Issued to Mustoe
 - 2. U.S. Patent No. 2,752,217 Issued to Simon
 - 3. U.S. Patent No. 6,419,102 Issued to Harpenau
 - B. Rejection of Claims 1-7 and 9-17 Under 35 U.S.C. § 103(a)
 - C. Rejection of Claim 8 Under 35 U.S.C. § 103(a)
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Appendix of Claims Involved in the Appeal

Evidence Appendix

Related Proceedings Appendix

The final page of this brief bears the attorney's e-signature.

I. REAL PARTY IN INTEREST

The real party in interest in this application is Builder's Best, Inc. An assignment to Builder's Best, Inc. is in the process of being executed and recorded.

II. RELATED APPEALS AND INTERFERENCES

Appellant is aware of no other appeals, interferences, or judicial proceedings, which may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

This is an appeal from a Final Rejection of claims 1-17. Claims 1-17 were originally presented. Claim 1 has been amended. No claims currently stand allowed. Appealed claims 1-17 are attached in the Appendix hereto.

IV. STATUS OF AMENDMENTS

A Response was filed on January 26, 2006, in response to the Final Office Action mailed on August 26, 2005. A Supplemental Final Office Action was mailed on October 18, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application is directed to an in-wall ventilation housing, typically used with dryer venting. The independent claims are 1, 10, and 17.

Claim 1 is directed to a housing (10) for dryer venting comprising a top wall (24), a bottom wall (22), and two sidewalls (20A, 20B) that combined define an inner space sized to house a portion of venting attached to a clothes dryer. (See p. 5, lines 13-17). The housing (10) also comprises a front face plate (14) extending from at least one of the walls, and a plurality of standoffs (42) extending rearwardly from the front face plate (14) and wherein each of the standoffs has a portion adapted to attach to a wood stud to hold the housing (10) in place. (See p. 6, lines 10-18).

Claim 10 is directed to a housing (10) for dryer venting comprising a top wall (24), a bottom wall (22), two sidewalls (20A, 20B), and a back wall (26), that combined define an inner space. (See p. 5, lines 13-17). The housing (10) also comprises at least one standoff (42) extending rearwardly and which comprises a beveled portion (46) adapted to sink into a wood stud when pressure is applied to the housing. (See p. 6, lines 12-16).

Claim 17 is directed to a method of installing a housing (10) for drying venting comprising the steps of providing a housing (10) with a box portion (12) and a face plate (14) with at least one standoff (42) attached to its backside; providing a wood stud for a wall in a building; positioning the housing (10) so that the standoff (42) is aligned with the wood stud; applying pressure against the housing to force a portion of the standoff into the wood stud; and permanently attaching the housing (10) to the wood stud. (See p. 7, lines 6-20).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7 and 9-17 have been rejected as unpatentable under 35 U.S.C. §103(a) as having been obvious at the time of the invention over U.S. Patent No. 6,938,640 issued to Mustoe (hereinafter “Mustoe”) in view of U.S. Patent No. 2,752,217 issued to Simon (hereinafter “Simon”).

Claim 8 has been rejected as unpatentable under 35 U.S.C. §103(a) as having been obvious at the time of the invention over Mustoe in view of Simon and in further view of U.S. Patent No. 6,419,102 issued to Harpenau (hereinafter “Harpenau”).

VII. ARGUMENT

Three groups of claims, as defined by the three independent claims in the application, are presented for consideration on appeal. Appellant’s claimed invention set forth in claim 1 is directed to a housing (10) for dryer venting comprising a top wall (24), a bottom wall (22), and two sidewalls (20A,20B) that combined define an inner space sized to house a portion of venting attached to a clothes dryer; a front face plate (14) extending from at least one of the walls; and a plurality of standoffs (42) extending rearwardly from the front face plate (14) and wherein each of the standoffs (42) has a portion adapted to attach to a wood stud to hold the housing in place.

Appellant’s claimed invention set forth in independent claim 10 is directed to a housing (10) for dryer venting comprising a top wall (24), a bottom wall (22), two sidewalls (20A,20B), and a back wall (26), that combined define an inner space; and at least one standoff (42) extending rearwardly in which comprises a beveled portion (46) adapted to sink into a wood stud when pressure is applied to the housing.

Appellant’s claimed invention set forth in independent claim 17 is directed to a method of installing a housing for drying venting comprising the steps of providing a housing (10) with a box portion (12) and a face plate (14) with at least one standoff (42) attached to its backside; providing a wood stud for a wall in a building; positioning the housing (10) so that the standoff (42) is aligned with the wood stud; applying pressure against the housing (10) to force a portion of the standoff (42) into the wood stud; and permanently attaching the housing (10) to the wood stud.

A. References

1. U.S. Patent No. 6,938,640 Issued to Mustoe

Mustoe teaches a recessed box assembly for a dryer exhaust hose. It includes a box portion, having walls defining an interior, and a frame attachable to the box portion. It also discloses knockouts. The Mustoe reference does not teach standoffs extending rearwardly from a front face plate.

2. U.S. Patent No. 2,752,217 Issued to Simon

Simon teaches a medicine cabinet. The medicine cabinet has a peripheral flange secured to the edges of the walls of the cabinet, but no standoffs extending rearwardly from it. It instead has recesses/protuberances on the sidewalls of the cabinet.

3. U.S. Patent No. 6,419,102 Issued to Harpenau

Harpenau teaches a wall outlet box for a dryer vent exhaust conduit. The box includes a plurality of walls defining an enclosure open at the front.

B. Rejection of Claims 1-7 and 9-17 Under 35 U.S.C. § 103(a)

The Examiner in the Supplemental Final Office mailed October 18, 2006, rejected claims 1-7 and 9-17 under 35 U.S.C. § 103(a) as being unpatentable over Mustoe in view of Simon.

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art. *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). Moreover, the prior art references must teach or suggest all of the claimed limitations. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As noted above, Mustoe is directed to a recessed box assembly for a dryer exhaust hose. Simon is directed to a medicine cabinet which may be mounted in a wall between two studs or other vertical members.

As the Examiner has conceded, the Mustoe recessed box does not include standoffs or anything resembling standoffs extending rearwardly. All of the claims of the present application recite standoffs either attached to the front face plate and/or extending rearwardly from the housing. The Examiner contends that Simon discloses such standoffs and therefore rejects claims 1-7 and 9-17 under §103 as having been obvious over Mustoe in view of Simon.

Simon does not disclose standoffs extending rearwardly. The “recesses” disclosed in the Simon reference are on the side, and do not depend from the face plate or extend rearwardly in any fashion from the housing as those dimensions are defined in the present application. Thus, even in combination, Mustoe and Simon do not disclose all of the elements of the claims of the present application, and therefore the Examiner’s §103 rejection should be reversed. The references do not suggest putting standoffing on the face plate, thus opening up the possibility of including knockouts in the sidewalls if desired. Common sense does not suggest the obviousness of the currently claimed invention, and the rejection of claims 1-7 and 9-17 should be reversed. *See KSR Int’l Co. v. Teleflex, Inc. et al.*, 127 S. Ct. 1727 (2007).

Moreover, the medicine cabinet of Simon is not in an analogous art field to that of the boxes for dryer exhaust ventilation of the present application and that of the Mustoe references. The medicine cabinet is for a bathroom or other part of a home and is designed to contain medicines or other personal effects and has no knockouts or other features that may be included in the recessed boxes of the present invention. There would be no reason for a knockout in a medicine cabinet and given the placement of the “recesses,” it would not even be possible in the sidewalls. Because it is not an analogous art field, the Examiner’s reliance on the Simon reference as a basis for rejection of the instant application is misplaced and incorrect, and should be reversed on that ground as well. *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

C. Rejection of Claim 8 Under 35 U.S.C. § 103(a)

The Examiner in the Final Office Action rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Mustoe in view of Simon and in further view of Harpenau. Claim 8

recites that the top wall, bottom wall, and sidewalls are at an angle of 90.5° to 92.5° with respect to the rear wall.

Mustoe is directed to a recessed box assembly for a dryer exhaust hose. Simon is directed to a medicine cabinet which may be mounted in a wall between two studs or other vertical members. Harpenau is directed to a wall outlet box.

As the Examiner has conceded, the Mustoe recessed box assembly does not include standoffs or anything resembling standoffs. The Examiner again contends that Simon discloses such standoffs. Harpenau teaches an in-wall box with walls at an angle other than 90°.

For the same reasons discussed above, i.e., Simon does not disclose standoffs, extending from the face plate or extending rearwardly at all, the cited references do not disclose all of the recited claim elements. Therefore, even in combination, Mustoe, Simon, and Harpenau do not disclose all of the elements of claim 8 of the present application, and the Examiner's §103 rejection should be reversed.

In addition, as noted above, the medicine cabinet of Simon is not an analogous art field to that of the dryer exhaust ventilation box of the present application. Because it is not an analogous art field, the Examiner's reliance on it as a basis for rejection of the instant application is misplaced and incorrect, and should be reversed on that ground as well.

The addition of Harpenau to the Mustoe and Simon references to even attempt to show the features of the claims of the present application shows that the Examiner is using hindsight reconstruction to try to arrive at the invention of claim 8 of the present application. The three references in combination not only do not show all of the elements of the claims, but this hindsight reconstruction by the Examiner shows that the invention was not obvious or predictable. Common sense dictates that this combination of references does not show the obviousness of the claimed invention of claim 8 and therefore, the Examiner's rejection must be reversed.

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D. Conclusion

For the reasons set forth above, and as apparent from examining the invention defined by claims 1-17, when properly considering the cited references of Mustoe, Simon, and Harpenau, these claims would not have been obvious and define patentable subject matter. Appellant requests the Examiner's rejections of claims 1-17 be reversed, and that the application passed to issuance forthwith.

Respectfully submitted,

Dated: October 15, 2007

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APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c))

1. (previously presented) A housing for dryer venting comprising:
a top wall, a bottom wall, and two side walls that combined define an inner space sized to house a portion of venting attached to a clothes dryer;
a front face plate extending from at least one of the walls; and
a plurality of standoffs extending rearwardly from the front face plate wherein each of the standoffs has a portion adapted to attach to a wood stud to hold the housing in place.
2. (original) The housing defined in claim 1 wherein the standoff includes a hole therethrough and is adapted to receive a screw.
3. (original) The housing defined in claim 1 and further comprising a knockout sized to receive a duct attached to a clothes dryer.
4. (original) The housing defined in claim 1 and further comprising a rear wall attached to the top wall, bottom wall, and side walls.
5. (original) The housing defined in claim 1 and further comprising a plurality of posts adapted to have a bracket attached thereto for holding a dryer venting duct in place and stable.
6. (original) The housing defined in claim 3 wherein the knockout is in the top wall.
7. (original) The housing defined in claim 4 and further comprising a knockout in the rear wall, the knockout sized to receive a duct attached to a clothes dryer.

8. (original) The housing defined in claim 4 wherein the top wall, bottom wall, and side walls are at an angle of 90.5° to 92.5° with respect to the rear wall.

9. (original) The housing defined in claim 1 wherein the standoff includes a beveled portion to assist in boring the standoff into a wood stud.

10. (original) A housing for dryer venting comprising:

a top wall, a bottom wall, two side walls, and a back wall, that combined define an inner space; and

at least one standoff extending rearwardly and which comprises a beveled portion adapted to sink into a wood stud when pressure is applied to the housing.

11. (original) The housing defined in claim 10 wherein the standoff includes a hole therethrough and is adapted to receive a screw.

12. (original) The housing defined in claim 10 and further comprising a knockout sized to receive a duct attached to a clothes dryer.

13. (original) The housing defined in claim 10 and further comprising a rear wall attached to

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the top wall, bottom wall, and side walls.

14. (original) The housing defined in claim 10 and further including, a front face plate to which the at least one standoff is attached.

15. (original) The housing defined in claim 12 wherein the knockout is in the top wall.

16. (original) The housing defined in claim 13 and further comprising a knockout in the rear wall, the knockout sized to receive a duct attached to a clothes dryer.

17. (original) A method of installing a housing for dryer venting comprising the steps:

(a) providing a housing with a box portion and a face plate with at least one standoff attached to its back side;

(b) providing a wood stud for a wall in a building;

(c) positioning the housing so that the standoff is aligned with the wood stud;

(d) applying pressure against the housing to force a portion of the standoff into the wood stud; and

(e) permanently attaching the housing to the wood stud.

EVIDENCE APPENDIX (35 U.S.C. § 41.37(c))

U.S. Patent No. 6,938,640 issued to Mustoe was entered by the Examiner in the Final Office Action mailed on October 18, 2006.

U.S. Patent No. 2,752,217 issued to Simon was entered by the Examiner in the Final Office Action mailed on October 18, 2006.

U.S. Patent No. 6,419,102 issued to Harpenau was entered by the Examiner in the Final Office Action mailed on October 18, 2006.

RELATED PROCEEDINGS APPENDIX (35 U.S.C. § 41.37(c))

None.